

CHAPTER NO. 884

HOUSE BILL NO. 2429

By Representatives Maddox, Godsey, Mumpower, Bone, Caldwell, Dunn, White, Sands, Sargent, Bittle

Substituted for: Senate Bill No. 2603

By Senator Herron

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 25, relative to certain sales at flea markets.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 25, is amended by adding Sections 2 through 4 of this act as a new part.

SECTION 2.

(a) For the purposes of this act, unless the context requires otherwise:

(1) "Manufacturer's or distributor's representative" means a person who has on his person and available for public inspection written proof that such person is authorized by the manufacturer or distributor for the public retail sale of those products which are offered for sale. Such credentials shall include the seller's name and may include a date upon which such authorization shall expire.

(2) "New and unused property merchant" means a person who engages in the retail sale of personal property at a wholesale/retail outlet in this State and some of such property offered for sale is new and unused.

(3) "New and unused property" means tangible personal property that was acquired by the new and unused property merchant directly from the producer, manufacturer, wholesaler or retailer in the ordinary course of business which has never been used since its production or manufacturing or which is in its original and unopened package or container, if such personal property was so packaged when originally produced or manufactured.

New and unused property does not include:

(A) Property which is in its original and unopened package or container that contains a date or expiration date and such date is not a new date or the date has expired.

(B) Property which was pre-owned by an individual other than the new and unused property merchant and such individual obtained the property through the ordinary course of business.

(C) Property, although never used, whose style, packaging or material clearly indicates that such property was not produced or manufactured within recent times.

(4) "Wholesale/Retail Outlet" means an event:

(A) At which two (2) or more persons offer personal property for sale or exchange; and

(B) If the event is held more than six (6) times in any twelve (12) month period, regardless of the number of persons offering or displaying personal property or the absence of fees, at which such property is offered or displayed for sale or exchange; or

(C) At which a fee is charged for the privilege of offering or displaying such personal property; or

(D) At which a fee is charged to prospective buyers for admission to the area where such personal property is offered or displayed for sale.

"Wholesale/retail outlet" is interchangeable with and applicable to "flea market", "itinerant vendor", "swap meet", "indoor swap meet", or other similar terms regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

"Wholesale/retail outlet" does not mean nor apply to an event which is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes.

(b)

(1) Every new and unused property merchant shall maintain receipts for the acquisition of new and unused property which must contain all of the following information:

(A) The date of the transaction on which the property was acquired;

(B) The name and address of the person, corporation, or entity from whom the property was acquired;

(C) An identification and description of the property acquired;

(D) The price paid for such property; and

(E) The signatures of the person selling the property and the new and unused property merchant only if the new and unused property merchant acquires the property vis-à-vis the

person selling the property if such person is not regularly engaged in the normal course of business of selling such property.

(2) If a new and unused property merchant makes a single purchase of five hundred dollars (\$500) or more from an individual or corporation, the bill of sale from such purchase shall be sufficient to satisfy the record keeping requirements of this subsection.

(c) The record of each purchase transaction provided for in this section shall be maintained for a period of not less than two (2) years.

(d) It is an offense for any new and unused property merchant required to maintain receipts under the provisions of this section to knowingly:

(1) Falsify, obliterate or destroy such receipts;

(2) Refuse or fail, upon the request of a law enforcement officer, to make such receipts available for inspection within a period of time which is reasonable under the individual circumstances surrounding such request; provided, nothing contained within the provisions of this subsection shall be construed to require the new and unused property merchant to possess such receipt on or about his or her person without reasonable notice;

(3) Fail to maintain the receipts required by this section for at least two (2) years; or

(4) Present credentials pursuant to the requirements of this section which are false, fraudulent, forged, fraudulently obtained or the nature of which is misrepresented.

(e)

(1) For the first violation of subsection (e), the violator shall be issued a warning and informed of the penalty for any subsequent violations.

(2) A second or subsequent violation of subsection (e) is a Class C misdemeanor punishable by fine only.

(f)

(1) For the first violation of subsection (b), the violator shall be issued a warning and informed of the penalty for any subsequent violations.

(2) A second and subsequent violation of subsection (b) is a Class C misdemeanor punishable by fine only.

(g) This section shall apply to all new and unused property purchased or acquired on or after January 1, 1999 which is sold, or to be sold, at a wholesale/retail outlet in this state.

SECTION 3. The provisions of Section 2 of this act shall not apply to:

(1) The sale of a motor vehicle or trailer that is required to be registered or is subject to the Certificate of Title laws of this State;

(2) The sale of agricultural products, forestry products or food products, other than food as defined as new and unused property;

(3) Business conducted at any industry or association trade show;

(4) The sale of arts or crafts by the person who produced such arts and crafts;

(5) A manufacturer's or distributor's representative as defined in Section 2 of this act; or

(6) Any new and unused property merchant under the age of eighteen (18) years.

SECTION 4. (a) No person shall knowingly sell or offer for sale at a wholesale/retail outlet any food manufactured and packaged for sale for consumption by a child under the age of two (2) years, over-the counter drug or medication, or cosmetic which has an expiration date, and such date has expired.

(b) Any person who violates the provisions of this section commits a Class C misdemeanor, punishable by a fine only, not to exceed one hundred dollars (\$100.00) for each violation.

SECTION 5. This act shall take effect January 1, 1999, the public welfare requiring it.

PASSED: April 22, 1998


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 6th day of May 1998


DON SUNDQUIST, GOVERNOR